

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04 C 7697
)	
GILBERT PURZE, ESTATE OF JEROME)	Judge Norgle
PURZE,, JOHN D. GOTTA, and J & G)	
ENTERPRISES INTERNATIONAL, INC.)	
)	
Defendants.)	

CONSENT DECREE

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (the “Corps of Engineers”), filed a complaint against defendants, Gilbert Purze, the estate of Jerome Purze, John D. Gotta, and J&G Enterprises International, alleging that defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the complaint alleges that defendants violated CWA Section 301(a) by causing fill and/or dredged material to be discharged into waters of the United States located between 13th and 14th Streets, East of Monroe Ave., Winthrop Harbor, Illinois at the NE 1/4, T46N, R12E, Section 16, 12E (“the site”);

WHEREAS, the complaint alleges that the discharge of dredged or fill material was without authorization by the Corps of Engineers and is more fully described in the complaint in this case;

WHEREAS, the complaint seeks: (1) an order enjoining the defendants from any further unpermitted discharge of dredged or fill material into the waters of the United States, and requiring defendants to remove the fill and/or dredged material, and restore the area; (2) an order enjoining defendants from any further unpermitted discharges of pollutants into waters of the United States; (3) an award to plaintiff of an appropriate civil penalty pursuant to the terms of 33 U.S.C. §§ 1319(b) and 1344 for each day on which each violation occurred; (4) an award to plaintiff for its costs in connection with this action; and (5) an award to plaintiff of such further relief as this court deems just;

WHEREAS, this consent decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the complaint regarding the site;

WHEREAS, the United States and defendants agree that settlement of this case is in the public interest and that entry of this consent decree is the most appropriate means of resolving the United States' damages claims under the CWA against defendants in this case; and

WHEREAS, the court finds that this consent decree is a reasonable and fair settlement of the United States' claims against defendants in this case, and that this consent decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction and Venue

1. This court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Northern District of Illinois pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the subject property is located in this district, and the causes of action alleged herein arose in this district.

3. The complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. Applicability

4. The obligations of this consent decree shall apply to and be binding upon defendants, their agents, employees and servants, and successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the defendants whether or not such person has notice of this consent decree. In any action to enforce this consent decree defendants shall not raise as a defense the failure of any of their agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with defendants, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the site shall not alter or relieve defendants of their obligations to comply with all of the terms of this consent decree. As a condition to any such transfer, defendants shall reserve all rights necessary to comply with the terms of this consent decree.

III. Scope of Consent Decree

6. This consent decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the complaint against defendants under CWA Section 301.

7. It is the express purpose of the parties in entering this consent decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this consent decree or resulting from the activities required by this consent decree shall have the objective of causing defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Except as in accordance with this consent decree, defendants and their agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. This consent decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this consent decree shall limit the ability of the Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this consent decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This consent decree in no way affects or relieves defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This consent decree does not relieve defendants of liability for any violations of the Clean Water Act other than those alleged in the complaint.

12. This consent decree in no way affects the rights of the United States as against any person not a party to this consent decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this consent decree and applicable law.

14. Except as provided in paragraphs 1 through 3, nothing in this consent decree shall constitute an admission of fact or law by any party.

IV. Specific Provisions

Civil Penalties

15. Within 30 days of entry of this Consent Decree defendants shall pay a civil penalty to the United States in the amount of seventy five thousand dollars (\$75,000).

16. Defendants shall make the above-referenced payment by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 04V01556. Payment shall be made in accordance with instructions provided to defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Illinois. Any payments received by the Department of Justice after 3:00 P.M. (Central Time) will be credited on the next business day.

17. Upon payment of the civil penalty required by this consent decree, defendants shall provide written notice to the United States Attorney’s Office for the Northern District of Illinois that such payment was made in accordance with Paragraph 15.

18. Civil penalty payments pursuant to this consent decree are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

Restoration, Preservation and Mitigation

19. Defendants shall perform the following:

A. Within 60 days after entry of the Consent Decree, Defendants implement to the restoration plan as described in the “Purze Property Winthrop Harbor Wetland Restoration Plan,” by Christopher B. Burke Engineering Ltd., attached hereto as Exhibit 1.

B. If the defendants apply for a permit under Section 404 of the CWA, 33 U.S.C. § 1344 within 5 years from the date of entry of this Consent Decree, defendants shall, within 60 days from submission of the permit application to the Corps of Engineers, execute and record with the Lake County Recorder of Deeds the deed restriction attached hereto as Exhibit 2 for the wetland portion of the property, the boundaries of which shall be delineated as part of the permit application process, and serve a copy of the executed and recorded deed restriction on the Corps of Engineers.

B. If the defendants do not apply for a permit under Section 404 of the CWA, 33 U.S.C. § 1344, as set forth in subparagraph B above, defendants will perform a wetland delineation at the site and submit the delineation to the Corps of Engineers for approval, pursuant to Paragraph 22 below, and defendants shall, within 60 days from the Corps of Engineer’s approval of the wetland delineation, execute and record with the Lake County Recorder of Deeds the deed restriction attached hereto as Exhibit 2 for the wetland portion of the property, as delineated pursuant to this subparagraph, and serve a copy of the executed and recorded deed restriction on the Corps of Engineers.

C. Within 120 days of entry of this Consent Decree, defendants shall provide proof to the United States that defendants paid seventy-five thousand dollars (\$75,000) to “The Lake County Forest Preserve District” (“LCFPD”) for mitigation of wetland that may have been indirectly impacted by the alleged violations and which will not be addressed by paragraph 19.A.

Such proof shall be made by providing a signed certification from an authorized LCFPD representative which states that \$75,000 has been received by the LCFPD from the defendants.

Permanent Injunction

20. Defendants are permanently enjoined from discharging any pollutant into navigable waters of the United States without a permit.

Stipulated Penalties

21. After entry of this consent decree, if defendants fail to timely fulfill any requirement of the consent decree, including without limitation paragraphs 19 and 20 above, they shall pay a stipulated penalty to the United States for each violation of each requirement of this consent decree as follows:

- | | | |
|----|--|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$500.00 per day |
| B. | For Day 31 up to and including Day
60 of non-compliance | \$1,000.00 per day |
| C. | For Day 61 and beyond | \$2,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

VI. Addresses

22. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

- A. To the Corps of Engineers:

Mitchell A. Isoe
Chief, Regulatory Branch
U.S. Army Corps of Engineers
111 N. Canal

Suite 600
Chicago, Illinois 60606

B. To the United States Department of Justice

Kurt N. Lindland
Assistant United States Attorney
219 S. Dearborn St.
5th Floor
Chicago, Illinois 60604

C. To Defendants:

Anthony DiVincenzo
DiVincenzo, Schoenfield & Swartzman
33 N. LaSalle Street, 29th Flr.
Chicago, Illinois 60602

VII. Costs of Suit

23. Each party to this consent decree shall bear its own costs and attorneys' fees in this action. Should defendants subsequently be determined by the court to have violated the terms or conditions of this consent decree, defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against defendants for noncompliance with or enforcement of this consent decree.

VIII. Public Comment

24. The parties acknowledge that after the lodging and before the entry of this consent decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this consent decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or to

challenge any provision of this consent decree, unless the United States has notified defendant in writing that it no longer supports entry of the consent decree.

IX. Continuing Jurisdiction of the Court

25. This court shall retain jurisdiction over this action in order to enforce or modify the consent decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this consent decree. During the pendency of the consent decree, any party may apply to the court for any relief necessary to construe and effectuate the consent decree.

X. Final Judgment

26. Upon its entry by the court, this consent decree shall have the force and effect of a final judgment.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2006.

United States District Judge

Agreed to in form and substance:

ON BEHALF OF THE UNITED STATES:

PATRICK J. FITZGERALD
United States Attorney

By:

KURT N. LINDLAND
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5314

Dated: _____

ON BEHALF OF Defendants:

Gilbert Purze

Date:

The Estate of Jerome Purze

Date:

John D. Gotta

Date:

J&G Enterprises International, Inc.

Date:

Counsel for Defendants

Anthony DiVincenzo
DiVincenzo, Schoenfield & Swartzman
33 N. LaSalle Street, 29th Flr.
Chicago, Illinois 60602
(312) 334-4800

Date: